

Legal Matters®

Can you deduct the cost of 'assisted living' on your taxes?

If you live in an assisted living facility – or have a family member who does – you know that the costs continue to rise every year. But did you know some of those costs may be tax-deductible?

Medical expenses, including some long-term care expenses, may be deductible if they are more than 7.5 percent of your adjusted gross income. (You have to itemize your deductions, and the amount of the deduction varies depending on a number of other factors.)

Generally, people who are reasonably healthy can deduct only the medical component of their assisted living costs; they can't deduct the cost of room and board. The assisted living facility is responsible for telling you what portion of your fees is attributable to medical costs. On the bright side, "medical costs" can include a portion of an entrance or initiation fee if a portion of that fee is dedicated to medical expenses.

In some cases, though, a resident can deduct room and board and other ordinary living

expenses. In order to claim this larger deduction, three things must be true:

- (1) *The resident is in the facility primarily for medical care, not custodial care.*
- (2) *The resident is "chronically ill."* This means that a doctor or nurse has certified that the resident either:
 - cannot perform at least two activities of daily living, such as eating, bathing, dressing, transferring, or using the bathroom; or
 - requires supervision due to a cognitive impairment (such as Alzheimer's disease or another form of dementia).
- (3) *Personal care services are provided according to a plan of care prescribed by a licensed health care provider.* This means that a doctor, nurse, or social worker must prepare a plan that outlines the specific daily services the resident will receive. (Though it's not required by law, most assisted living facilities prepare care plans for their residents.)

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Who gets cash hidden in house by deceased former owner?

Imagine you bought a house and, a year and a half later, you discovered bundles of cash that had been hidden away by the deceased former owner. Who would be entitled to the money – you or the former owner’s estate? Confronted with just such a case, an Oregon appeals court determined that the new owner can keep the windfall.

William and Helene Valoff owned a house in Milwaukie, Oregon. After Mr. Valoff’s unexpected death, all assets of his estate were transferred to Mrs. Valoff. Following Mrs. Valoff’s death, her estate sold the house to Helen Sollars. The sale agreement required the estate to leave certain specific items (such as the stove and refrigerator) in the house, but otherwise to remove “all personal property” before the closing of the sale.

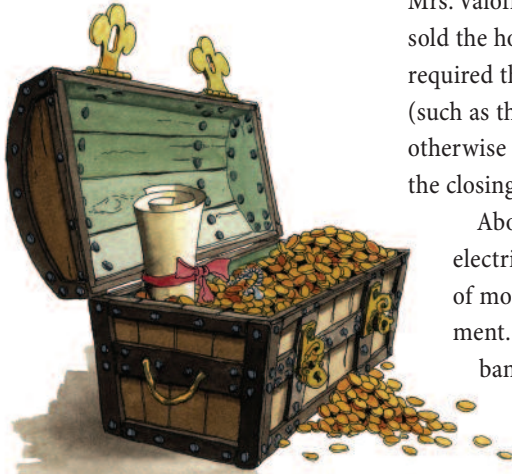
About a year and a half after the closing, an electrician working on the house found bundles of money hidden above the ceiling of the basement. The bundles were bound with rubber bands and adding machine tapes bearing Mr. Valoff’s handwriting. Because of uncertainty about who owned the money, the

police seized it and found that it totaled about \$122,000.

Ms. Sollars argued that she should receive the money because she was the rightful owner of anything left in the house after the closing. The Valoff estate countered that it remained the owner because it didn’t intend to transfer any right to the money when it sold the house. A judge agreed with the estate, reasoning that the sale agreement was for the transfer of a house, not of money that neither party knew about. Ms. Sollars appealed.

In September 2008, the Oregon Court of Appeals ruled that Ms. Sollars was the owner of the money. The court concluded that the sale agreement’s reference to “all personal property” included the bundles of cash hidden in the house. The fact that the money’s existence wasn’t known at the time of the sale made no difference, the court held.

The moral of the story is that it’s not wise to hide assets unless you tell somebody about them, or mention them in your will. Otherwise, if you die suddenly, they might never be found – or by the time they are, they might belong to someone else.



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If you can’t resolve a problem within the nursing home, your next step should be to contact the local ombudsman assigned to the nursing home.

Ombudsmen: front-line advocates for nursing home residents

Disagreements with a nursing home can arise regarding any number of topics, including the quality of food, troublesome roommates, lack of privacy, and services that are less than what was promised. Many disputes can be resolved by speaking with a nursing home staff member or supervisor, or moving up the chain of command. But if you can’t resolve things within the nursing home, your next step should be to contact the local ombudsman assigned to the nursing home.

An ombudsman is an advocate for residents of nursing homes, board-and-care homes, and assisted living facilities who is trained to resolve problems. Under the federal Older Americans Act, every state is required to have an ombudsman program that addresses residents’ complaints and advocates for improvements in the long-term care system. While ombudsmen do not have direct authority to require action by a facility, they have the responsibility to negotiate on a resident’s behalf and to work with

other state agencies for effective enforcement.

Most statewide programs are composed of several regional or local ombudsman programs that operate within an Agency on Aging or other community organization. To find the ombudsman nearest you, contact the ombudsman office in your state, which can be found by going to: www.ltombudsman.org/static_pages/ombudsmen.cfm.

In addition to resolving complaints, ombudsmen may provide information about how to select a nursing home, answer questions about long-term care facilities, help people find the services they need in the community instead of entering a nursing home, and provide education on residents’ rights. Most state ombudsman programs publish annual reports about the problems and concerns they address. To learn more about the ombudsman program, visit the National Long-Term Care Ombudsman Resource Center at www.ltombudsman.org/default.cfm.

New law makes changes to reverse mortgages

In addition to addressing the current housing crisis, the Housing and Economic Recovery Act of 2008 makes changes to reverse mortgages, including higher borrowing limits and protections from aggressive marketing.

A reverse mortgage allows a homeowner who is at least 62 years old to use the equity in his or her home to obtain a loan that doesn't have to be repaid until the homeowner moves, sells, or dies. The new law, which took effect in October, increases the borrowing level on reverse mortgages. The national limit on the amount a homeowner can borrow is now \$417,000. This limit can be increased to \$625,000 in areas with high housing costs. This is a big jump from the earlier limits, which were \$200,160 and \$362,790.

Of course, these are the maximum loan amounts. The amount a homeowner can actually borrow depends on the home's value and location, interest rates, and the age of the borrower.

The new law also offers some additional protec-

tions for seniors. High fees and aggressive marketing have been cited as problems with reverse mortgages. Under the law, fees are capped at 2 percent of the first \$200,000 borrowed and 1 percent of the balance, with a maximum of \$6,000. In addition, the law prevents lenders from requiring borrowers to purchase insurance, annuities, or other products as a condition of getting a reverse mortgage. Lenders are also prohibited from working with other professionals who are trying to sell seniors financial products as part of the lending process.

In a related development, starting in 2009, the Federal Housing Administration will insure reverse mortgage loans for housing *purchases* in addition to loans for a current residence. This will make it much easier for seniors to use a reverse mortgage to buy a new home, as opposed to taking out money through a loan on an existing home.

This could be an option worth exploring for seniors who want to move closer to children or who have outgrown their current home.

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However, in all cases, expenses are not deductible if the resident is reimbursed by insurance or any other programs.

In some circumstances, adult children may get a tax deduction if they contribute to assisted living costs for a parent or other immediate family member, including an in-law. The family member must be a U.S. citizen (or a legal resident of the U.S., Canada or Mexico), and the adult child must provide more than half of the family member's total support for the year.

Even if the adult child is not paying more than half the family member's support for the year, the child may still be eligible for a deduction if he or she contributes to the family member's support along with others according to a written agreement. The adult child must pay more than 10 percent of the family member's support for the year, and, along with the others, collectively contribute more than half of the family member's support. All those supporting the family member must sign a document called a "Multiple Support Declaration."

Here's a second chance if you elected early Social Security benefits

Did you elect to take Social Security benefits before your full retirement age? If you did and are now looking for extra income, there may be an answer. Once you reach full retirement age, you can pay back the money you have received and reapply for full retirement benefits.

Although you can collect Social Security benefits between age 62 and your full retirement age, if you do, your benefits will be lower.

For example, if you were born in 1944 and decided to retire at age 62, four years before your full retirement age of 66, your total benefit reduction is 25 percent. If your full benefit was to be \$1,000 a month, your reduced benefit is \$750.

A little-known provision of the Social Security laws allows you to

withdraw your application for early benefits and reapply for your full benefits. The catch is that you must be able to pay back all the money you received so far. However, because you don't have to pay any

interest on the benefits you received, if you can find the money to repay the benefits, it may be worth it. You could think of it as an interest-free loan.

The "withdrawal of application" form can be found online at: <http://www.socialsecurity.gov/online/ssa-521.pdf>



Spouses of Medicaid recipients may keep more money in 2009



The amount of money that spouses of Medicaid recipients can keep may increase in 2009, as a result of new guidelines issued by the federal Centers for Medicare and Medicaid Services.

The amount of assets that spouses of people who are on Medicaid and living in a nursing home can keep for themselves is set by each state, but the federal government sets a ceiling and a floor that the states must follow. For 2009, the ceiling has increased to \$109,560, and the floor has increased to \$21,912. These amounts are *in addition to* assets that aren't counted by Medicaid, such as a home.

The federal government also sets a ceiling and a floor on the amount of monthly income belonging to a spouse in a nursing home that the *other* spouse can keep for himself or herself.

For 2009, the floor amount is \$1,750. That means that if the spouse of someone in a nursing home doesn't have \$1,750 a month in income of his or her own, he or she can keep enough of the other spouse's income to bring the total up to \$1,750.

Depending on housing costs, this floor may be increased in some cases, up to a ceiling of \$2,739. The floor was set last summer and may be revised again on July 1, 2009.

Keep in mind that these income numbers refer only to how much of the institutionalized spouse's income the other spouse can keep if he or she does not have enough income on his or her own. The other spouse can keep *all* of his or her *own* income, even if it's much larger than these figures.

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